Supreme Court, U.S.
FILED

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No. 97-_____

In The
Supreme Court of the United States
October Term, 1997

CLAUDE V. ROUTH, Petitioner,

v.

STATE OF WYOMING, ex rel., WYOMING WORKERS' COMPENSATION DIVISION, Respondent.

Petition For A Writ of Certiorari
To The Supreme Court Of The State of Wyoming

PETITION FOR A WRIT OF CERTIORARI

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43 pp

QUESTION PRESENTED FOR REVIEW

Is the judgment entered by the Circuit Court for the First Judicial District of Hinds County, Mississippi in *Routh v. Wyoming Workers' Compensation Division* entitled to Full Faith and Credit in the State of Wyoming pursuant to Article 4, §1 of the Constitution of the United States of America?

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CITATION OF OPINION BELOW

The published opinion of the Wyoming Supreme Court in the case presented for issuance of a writ of certiorari is *Routh v. State of Wyoming, ex rel, Wyoming Workers' Compensation Division*, 952 P.2d 1108 (Wyo. 1998).

JURISDICTION

1. The Order sought to be reviewed is the Opinion of the Wyoming Supreme Court in *Routh v. State of Wyoming, ex rel, Wyoming Workers' Compensation Division*, entered on January 20, 1998.

2. An Order Denying Petition for Rehearing of the decision of the Wyoming Supreme Court was entered on February 18, 1998.

3. This Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Full Faith and Credit shall be given in each state to the public Acts, Records, and Judicial Proceedings of every other state. And the Congress may by general laws

prescribe the manner in which such Acts, Records and Proceedings shall be proved and the effect thereof. Article 4, §1 of the Constitution of the United States of America.

STATEMENT OF THE CASE

Claude V. Routh was injured on November 20, 1985, while in the course and scope of his employment as a pipe fitter for Project Construction Corporation in the State of Wyoming. After his injury, he applied for benefits pursuant to the Wyoming Worker's Compensation Act, which provided coverage to him. He returned to his home in Mississippi, where, with the consent of the Wyoming Workers' Compensation Division (hereafter referred to as WWCD) of the State of Wyoming, he received medical treatment. WWCD paid for the medical treatment he received in Mississippi. Routh was permanently and totally disabled as a result of the injuries he received and is entitled to receive benefits provided by WWCD as a result. When he sought such benefits, the WWCD ignored him and took no action on his claim.

After receiving no satisfaction Routh filed suit against the WWCD in Mississippi on February 8, 1990, seeking damages for his injury and for bad faith on the part of WWCD. Service of process on WWCD was had by mailing a certified copy of the Complaint to the Mississippi Secretary of State, pursuant to §13-3-57 Mississippi Code of 1972, as amended. WWCD received actual notice of filing of the suit together with a copy of the Mississippi Complaint on February 21, 1990.

WWCD failed to file an Answer to the Mississippi Complaint or otherwise appear and defend. A Default Judgment was taken against it on April 3, 1990. A hearing on damages was held by the Mississippi Court on June 15, 1992. WWCD was given notice of this hearing and again failed to respond, appear, or otherwise defend. On August 19, 1992, the Mississippi Court entered judgment in favor of Routh and against WWCD in the amount of One Million Nine-Hundred Twenty Three-Thousand Four-Hundred Dollars and Fifty Cents ($1,923,400.50), together with legal interest and costs of court. WWCD did not appeal this judgment, or attempt to set it aside in any way in the courts of the State of Mississippi.

On August 11, 1994, the Mississippi Judgment was enrolled in the State of Wyoming, pursuant to The Uniform Enforcement of Foreign Judgments Act, W.S. §1-17-701 et seq., and WWCD was given notice of the filing of the judgment. Enrollment of the judgment pursuant to the Uniform Enforcement of Foreign Judgments Act implements Article 4 §1 of the Constitution of the United States "Full Faith and Credit" Clause. *Sandstrom v. Sandstrom*, 880 P.2d 103 (Wyo. 1994); *Salmeri v. Salmeri*, 554 P.2d 1244 (Wyo. 1976). It was here that the federal issue was first raised.

On September 16, 1994, WWCD filed its Motion to Dismiss Registration of Foreign Judgment With Prejudice, and Motion for Sanctions claiming that the Mississippi Court lacked subject matter jurisdiction of Routh's claim; that WWCD enjoys sovereign immunity; that Mississippi lacked jurisdiction over WWCD under its Long Arm Statute (§13-3-57 of the Mississippi Code of 1972, as amended); and that Routh failed to exhaust his administrative remedies in the state of Wyoming before filing his action in the State of

Mississippi.

On October 3, 1994, Routh filed Plaintiff's First Interrogatories, Requests for Production and Request for Admissions to WWCD seeking information relating to the information contained in WWCD's Motion to Dismiss. On February 28, 1995, Routh filed Plaintiff's Resistance to Motion to Dismiss Registration of Foreign Judgment and Motion for Sanctions. The supporting brief pointed out:

> In *Sandstrom v. Sandstrom*, 880 P.2d 103 (Wyo. 1994), the Wyoming Supreme Court discussed the circumstances in which a judgment of a foreign jurisdiction, such as that obtained by Routh in the present case, is entitled to full faith and credit in the State of Wyoming. *Sandstrom v. Sandstrom, supra*, 880 P.2d at 106, the Court quoted the following language:
>
> > Under Article IV, section 1 of the United States Constitution, the final judgments and public acts of one state must be given full faith and credit in every other state. The United States Supreme Court has held that:
> >
> > full faith and credit '[g]enerally requires every State to give a judgment at least the res judicata effect which the judgment would be

> accorded in the State which rendered it.' A foreign judgment will be enforced to its full extent regardless of any errors or irregularities it may contain.
>
> The full faith and credit clause generally protects the judgment of a court of a sister state against collateral attacks, unless proper grounds for the collateral attack can be established.

On January 26, 1996, the District Court of the First Judicial District of the State of Wyoming, County of Laramie, entered its Order Denying Motion to Dismiss Registration of Foreign Judgment and Motion for Sanctions, giving WWCD leave to file another dispositive motion on or before February 1, 1996.

On April 16, 1996, WWCD filed its Motion for Summary Judgment, contending that the Mississippi Court lacked subject matter jurisdiction over the action; that WWCD enjoyed sovereign immunity from the claims of Routh in the Mississippi Court; and that the Wyoming Workers' Compensation Act provided the exclusive remedy for Routh's injuries. On August 8, 1996, Routh filed his Response to the motion.

On September 13, 1996, a hearing was held in the District Court for the First Judicial District, Laramie County, Wyoming, on WWCD's Motion for Summary Judgment, and

on that same day, the Court entered its Order Granting Defendant's Motion for Summary Judgment, without making any findings.

On October 4, 1996, Routh filed a timely Notice of Appeal in the Wyoming Supreme Court, seeking to overturn the ruling of the Wyoming District Court. Appellant Routh framed the issue before the Wyoming Supreme Court: "I. Is the Judgment of the Mississippi Circuit Court entitled to Full Faith and Credit in the courts of Wyoming?" [Appellant's Brief, p 1.] Appellees filed their brief on January 20, 1997, and Appellants filed a reply brief on February 13, 1997. Oral Argument was heard by The Wyoming Supreme Court on April 15, 1997, and the Court entered its opinion on January 20, 1998. In that opinion, the Court stated:

> We hold that the Order Granting Defendant's Motion [sic] Summary Judgment should be affirmed. This Mississippi judgment was not entitled to recognition in Wyoming because it was obtained without personal jurisdiction over the Division and without subject matter jurisdiction over the claim for worker's [sic] compensation benefits. Further, the State of Wyoming enjoys sovereign immunity, which we believe the Mississippi court would have recognized if it had not been misled by counsel. The failure to follow the claims procedure in the Wyoming Governmental Claims Statute also served to deprive the Mississippi court of jurisdiction over the tort claims. The judgment in favor of the Division stands.

Appellant filed a timely Petition For Rehearing pointing out that the Wyoming Supreme Court opinion ignored:

> Binding precedent from the United States Supreme Court concerning the inapplicability of state torts claims act limitations and procedures for torts committed by a state in a sister state; fail[ed] to provide Full Faith and Credit to the final judgment entered by the courts of Mississippi; allow[ed] improper collateral attack on finality of a judgment entered in a sister state; and ignore[d] [The Wyoming Supreme Court's] own standards of review when reviewing the issuance of summary judgment.

The Wyoming Supreme Court entered its Order Denying Petition for Rehearing on February 18, 1998.

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ARGUMENT

THE WYOMING SUPREME COURT ERRED WHEN IT FAILED TO GIVE FULL FAITH AND CREDIT TO THE JUDGMENT OF THE CIRCUIT COURT FOR THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

The Wyoming Supreme Court has decided this important case involving the application of federal principles of Full Faith and Credit in a way that conflicts with the

decisions of this Court and other state courts.

The Circuit Court for the First Judicial District of Hinds County, Mississippi (hereinafter referred to as the Mississippi Court) entered a lawful judgment in favor of Routh and against the Wyoming Workers' Compensation Division (hereinafter referred to as WWCD), in the amount of $1,923,400.50, together with lawful interest and costs. That judgment was proper in every respect.

A. The Mississippi Court Had *In Personam* Jurisdiction Over WWCD.

Whether a state may exercise *in personam* jurisdiction over an out-of-state Defendant is determined by answering the question of whether the forum state had requisite minimum contacts with the Defendant such that the exercise of jurisdiction over the Defendant does not "offend traditional notions of fair play and substantial justice." *International Shoe Company v. Washington*, 336 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *Helicopteros Nacionales De Colombia, SA v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984); *Burger King Corporation v. Rudzewicz*, 471, 462, 477, 105 S.Ct. 2174, 85 L.Ed. 2d 528 (1985); *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

In the present case the WWCD admitted that there are sufficient minimum contacts to establish both "general" and "specific" personal jurisdiction over the WWCD by the Mississippi Courts by its failure to respond to the requests for admissions propounded to it by Mr. Routh (Rule 36, Wyoming Rules of Civil Procedure). As outlined previously, the WWCD has been doing business in the State of Mississippi as a matter of course for a number of years.

Completely independent of its contacts with Routh, the WWCD has extensive contacts with citizens of the State of Mississippi, including other claimants and healthcare providers. Contrary to the assertions of the Division, it has in fact maintained systematic and continuous contact with the State of Mississippi, adequate to support the exercise of general jurisdiction. The Division's assertion that it is not doing business in the State of Mississippi is clearly specious in light of its own ongoing pattern of acting as an insurer of workers temporarily assigned to work in the State of Mississippi on behalf of Wyoming employers. By choosing to allow Wyoming employers to insure persons working in the State of Mississippi in this manner, the WWCD has agreed to the exercise of jurisdiction by the courts of that State.

The State of Mississippi was the most convenient forum for Routh to litigate the issue as he has received and continues to receive all of his medical attention in Mississippi, his witnesses on the nature and extent of his disability are in Mississippi and the actual effects of the Division's failure to properly administer benefits were felt by Routh in Mississippi. Routh obviously has an interest in obtaining convenient and effective relief of his claims for permanent disability benefits that was not afforded by the WWCD despite his and the Clerk of Court's repeated requests. Finally, the interest of Mississippi in protecting its citizens from the harmful effects of the bad faith of what, in essence, is an out-of-state insurer in adjudicating claims in an unfair manner so as to avoid injury to one of its citizens is compelling. It is not the social welfare system of Wyoming which had to support Mr. Routh and his family for the last several years due to the WWCD's refusal or inability to timely process his claims; Mississippi is where Routh and his

family suffered physically and emotionally and it is that state which has a substantial interest in protecting the rights of its citizens.

B. The Mississippi Court Had Subject Matter Jurisdiction Over WWCD.

The courts of Mississippi have subject matter jurisdiction over workers' compensation matters. The Mississippi courts have generally recognized that where a compensation claim of a foreign state involves a judicial determination (as The Wyoming Workers' Compensation Act did at the time of Routh's injury), that they can administer the claim in the Mississippi court applying the law of the foreign state. *Floyd v. Vicksburg Cooperative Company*, 126 So. 395 (Miss. 1930); *Taylor v. Traders General Industrial Insurance Company*, 164 So.2d 905 (Miss. 1964); and *Southland Supply Company, Inc., v. Patrick*, 397 So.2d 77 (Miss. 1981). *See also Watkins v. Jim Walter Homes, Inc.*, 666 F. Supp. 102 (S.D. Miss. 1987). Like Mississippi, Wyoming, at the time of Routh's injury in 1985, had a judicially administered Wyoming Workers' Compensation Act. At the time Routh filed his Complaint, however, Wyoming had neither an exclusive administrative system for the determination of workers' compensation claims nor a judicial system of administration. Instead, it had a type of hybrid in which the District Courts assumed initial jurisdiction over the workers' compensation claims and contested cases arising from disputes occurring in the administrative process within the Division were referred to an Independent Hearing Officer whose decisions were subject to review in the court system. *State, ex rel., Wyoming Worker' Compensation Division v. Rivera*, 796 P.2d 447 (Wyo. 1990). The Mississippi Court specifically found that it was vested with subject matter jurisdiction to

hear and determine the case.

In *Crider v. Zurich Insurance Company*, 380 U.S. 39, 85 S.Ct. 769 L.Ed. 2d (1965), the United States Supreme Court recognized there is no Constitutional impediment to an Alabama state court awarding damages under Georgia's Workers' Compensation Act to an Alabama resident where the Georgia Act provided that the injured employee's exclusive remedy could only be afforded through the Georgia Compensation Board. In *Crider*, the court noted that both the state in which an employee lives and the state in which the employee was injured have a large and considerable interest in the event. Nevertheless, the court noted:

> The State where the employee lives has perhaps even a larger concern, for it is there that he is expected to return; and it is on his community that the impact of the injury is most apt to be keenly felt. *Crider, supra*, 380 U.S. at 41.

In *Thomas v. Washington Gas and Light Company*, 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed. 2d 757 (1980), this court found that there was no Constitutional impediment to an award of additional workers' compensation benefits in the state in which a Claimant resided following a final award of benefits in another jurisdiction or state for the same injury (although in this case, the State of Wyoming made no award of damages, in spite of the fact it should have). The court noted:

> The principle that the Full Faith and Credit Clause does not require a state to subordinate

> its own compensation policies to those of another State has been consistently applied in more recent cases. (Citations omitted). Indeed, in the Nevada case [*Nevada v. Hall*, 440 U.S. 410 (1979)] the court not only rejected the contention that California was required to respect a statutory limitation on the Defendant's liability, but did so in a case in which the defendant was the sovereign State itself asserting, alternatively, an immunity from any liability in the courts of California. *Thomas v. Washington Gas and Light Company, id.*, 100 S.Ct. at 2659, 2660.

C. WWCD Did Not Enjoy Sovereign Immunity In The State Of Mississippi For The Tort Of Bad Faith

Mississippi, like Wyoming, has recognized the tort of bad faith. *See McCullough v. Golden Rule Insurance Company*, 789 P.2d 855 (Wyo. 1990), and *Southern Farm Bureau Casualty Insurance v. Holland*, 469 So.2d 55 (Miss. 1984). Specifically, in *Luckett v. Mississippi Wood, Inc.*, 481 So.2d 288 (Miss. 1985), the Mississippi Supreme Court recognized that a workers' compensation carrier could be held liable in tort for bad faith failure to pay workers' compensation benefits. In determining whether Mississippi or Wyoming law should be applied to the claims for damages caused by the Division's commission of the torts of bad faith and infliction of emotional distress, Mississippi's choice of law principles must be viewed. Mississippi has adopted the "center of gravity," or "the most substantial contacts" rule for determining whether in deciding this controversy it will apply its own law or the law of a foreign jurisdiction. *Ford*

v. State Farm Insurance Company, 625 So.2d 792, 794 (Miss. 1993). The "center of gravity" rule provides for the application of the law of:

> [t]he place which has the most significant relationship to the event and party, or which, because of the relationship or contact with the event and parties, has the greatest concern with the specific issues with respect to the liabilities and rights of the parties to litigation. *Spragens v. Louise Plantation, Inc.*, 391 So.2d 97, 99 (Miss. 1980).

In the present case, the Mississippi District Court determined that the WWCD committed a tort in the State of Mississippi upon a Mississippi citizen who sustained severe physical and emotional damages due to the Division's misconduct and refusal to pay benefits which he was entitled to under the law. The State of Mississippi has a legitimate interest in protecting its own citizens from the wrongdoing of workers' compensation carriers operating within its jurisdictional boundaries.

It must be remembered that the WWCD is nothing more than a state operated insurance compensation carrier which has chosen to provide benefits and coverage on a nationwide basis and should be held responsible for its misconduct where the effects of that misconduct are actually felt, in this case the State of Mississippi. *See Jack v. Enterprise Rent-A-Car of Los Angeles*, 899 P.2d 891 (Wyo. 1995).

D. The Wyoming Supreme Court Ignored Binging Precedent Of This Court.

Although the briefs of the parties cited Nevada v. Hall, 440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed.2d 416 (1979)and the parties argued the effect of this Court's opinion in oral argument, the Wyoming Supreme Court chose to ignore that binding precedent and did not address it in its opinion.

The arguments relating to sovereign immunity adopted by the Wyoming Supreme Court in this case were considered and rejected in *Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182, 59 L. Ed. 2d 416 (1979). In that case, a motor vehicle owned by the State of Nevada was involved in an automobile accident in California in which Hall sustained serious personal injuries. Hall brought suit in California and obtained judgment against the State of Nevada in the amount of One Million One Hundred and Fifty Thousand Dollars ($1,150,000.00). Nevada appealed the judgment to the United States Supreme Court urging the proposition that the Full Faith and Credit Clause of the United States Constitution required the California court to grant Nevada sovereign immunity and to apply Nevada's Tort's Claims Act including that Act's procedural requirements and limitations of damages in suits brought against the State of Nevada in California's courts.

The Court rejected this argument noting that "the Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy." *Nevada v. Hall, id.*, 99 S.Ct. at 1189. The Court stated the "full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events." *Nevada v. Hall, Id.*, 99 S.Ct. at 1189 (Quoting from *Pacific Insurance Co. v. Industrial Accident Comm.*, 306 U.S. 493,

502-3, 59 S.Ct. 629, 83 L.Ed. 940 (1939)).

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1997
January 20, 1998

CLAUDE V. ROUTH,	)	
	)	
Appellant	)	
(Plaintiff),	)	
	)	
v.	)	No. 96-291
	)	
STATE OF WYOMING, ex rel.,	)	
WYOMING WORKERS'	)	
COMPENSATION, DIVISION,	)	
	)	
Appellee	)	
(Defendant).	)	

Appeal from the District Court of Laramie County:
The Honorable Nicholas Kalokathis, Judge

Representing Appellant:

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Argument presented by Mr. Mackey.

Representing Appellee:

William U. Hill, Attorney General; John W. Renneisen, Deputy Attorney General; Gerald W. Laska, Senior Assistant Attorney General. Argument presented by Mr. Laska.

Before **TAYLOR**, C.J., and **THOMAS, MACY, GOLDEN**, and **LEHMAN, JJ.**

THOMAS, Justice.

The only issue before the Court in this case is whether, pursuant to the Constitution of the United States, full faith and credit must be afforded to a judgment entered in a Mississippi court against the Workers' Compensation Division (the Division), an agency of the State of Wyoming. Claude V. Routh (Routh) was injured in Wyoming in November of 1985 while working in covered employment under the Wyoming Worker's Compensation Act. Wyo. Stat. §§27-12-101 to -804 (1983). After receiving benefits in the form of temporary total disability payments and the payment of medical claims, while residing in Mississippi, Routh sued the Division in Mississippi. The Division did not appear, and a default judgment was entered in the Mississippi court in the gross amount of $1,923,400.50[1] with interest and costs. Routh filed the Mississippi Judgment in

[1] Specifically, under the Wyoming Workers' Compensation Act, the court awarded Routh permanent disability benefits from April 1990 until the date of the judgment in the amount of $40,544.14 and permanent and total disability benefits for the remainder of Routh's life in the amount of $322,856.36. With respect to the torts of bad faith and the infliction of emotional distress, the court awarded Routh $500,00 in actual damages, $60,000 in future medical benefits, and $1,000,00 in punitive damages.

Wyoming, and the Division appeared to collaterally attack that judgment. The Division filed a Motion for Summary Judgment in which it asserted lack of personal jurisdiction over the defendant by the Mississippi court; sovereign immunity protecting it from the Mississippi action; and the proposition that under Wyoming law the Worker's Compensation Act provided the exclusive remedy. The district court entered an Order Granting Defendant's Motion for Summary Judgment, ruling that "the Defendant is entitled to summary judgment on all counts." There is no reversible error in the ruling of the district court, and the Order Granting Defendant's Motion for Summary Judgment is affirmed.

In the Appellant's Brief, which Routh filed, the issue is stated as:

> I. Is the judgment of the Mississippi Circuit Court entitled to full faith and credit in the courts of Wyoming?

In the Brief of Appellee, filed by the State of Wyoming, the issues are defined in this way:

> A. Whether the mailing of checks and other correspondence to Claimant in Mississippi, in response to Claimant's applications for benefits and requests for information, constituted sufficient contacts with Mississippi to permit its courts to exercise personal jurisdiction over the Wyoming Workers' Compensation Division (Division).
>
> B. Whether the Mississippi court could

exercise subject matter jurisdiction over a claim for workers' compensation benefits, and claims of emotional distress and bad faith stemming from the Division's administration of Claimant's application for benefits under the Wyoming Workers' Compensation Act, where:

> Claimant resided in and was employed in Wyoming when he suffered his work-related injuries;
>
> Claimant suffered the work-related injuries in Wyoming; and
>
> Claimant's employer was principally located in Wyoming.

C. Even assuming the State had waived its sovereign immunity, was the action was [sic] brought and judgment obtained against defendant in compliance with the mandatory provisions of the Wyoming Governmental Claims Act.

In Appellant's Reply Brief, Routh did not specify any issues, but stated these additional arguments:

I. Appellee had actual knowledge of the Mississippi court action and waived any defect in the giving of notice by its failure to

file an answer or otherwise appear in the Mississippi court procedures.

II. The Mississippi court judgment is entitled to full faith and credit and is not subject to collateral attack in the present action.

In November of 1985, Routh suffered a work-related injury while employed as a pipe fitter on a construction project in Lincoln County, and he reported the injury on November 18, 1985. At the time of his injury, Routh was a resident of Wyoming, and he was employed here by a Wyoming employer. Following his report of the injury, Routh began to receive medical benefits and temporary total disability benefits under the Wyoming Worker's Compensation Act. WYO. STAT. §27-12-101 to -804. He received temporary total disability benefits for various periods of time that totaled 391 days. While he was receiving benefits, Routh moved to Mississippi, and he continued to receive worker's compensation benefits for this work-related injury in that state.

In 1987 and 1988, the Division received notice from Routh's treating physicians that he was at or approaching maximum medical improvement. The Division was not successful in obtaining from the treating physicians a rating of Routh's disability according to Wyoming's statutes, and it then requested that he come to Wyoming for an evaluation for permanent partial disability benefits. The Division arranged for a physical examination at the Gottsche Center in Thermopolis, and it paid for Routh's transportation and expenses for the trip from Mississippi to Wyoming in July of 1988. The examining physician in Wyoming rated Routh's permanent partial disability as 4% of the whole body.

Routh never did file a claim with the Division for permanent partial disability at a 4% level or any other level. It appears that Routh decided that he was permanently totally disabled, and on February 8, 1990, he filed a Complaint in the Circuit Court for the First Judicial District of Hinds County, Mississippi. He sought recovery of benefits under the Wyoming Worker's Compensation Act, and also damages for the torts of bad faith and the intentional infliction of emotional distress. Routh advised the Mississippi court that it had jurisdiction over the Division pursuant to service of process under Mississippi's long-arm statute. MISS. CODE ANN. §13-3-57 (1972). The Division did not appear and answer in the case in Mississippi, and a default was entered. Later the Mississippi court entered a default judgment, acknowledging it was required to apply Wyoming law. The Mississippi court ruled that Routh was entitled to benefits under the Wyoming Worker's Compensation Act and that he could recover damages for the torts of bad faith and the intentional infliction of emotional distress. A Judgment then was entered on August 19, 1992 in the Mississippi court against the Division in the total amount of $1,923,400.50.

Routh then brought the Mississippi judgment to Wyoming, where on August 11, 1994 he enrolled it in the First Judicial District Court of the State of Wyoming, in and for Laramie County, pursuant to the Uniform Enforcement of Foreign Judgments Act. WYO. STAT. §1-17-701 to -707 (1988). The Division appeared in the Wyoming district court, and, after failing to secure relief by a motion to dismiss, presented a motion for summary judgment. The Division asserted as grounds for its motion the lack of personal jurisdiction over the Division by the court in Mississippi; the lack of subject matter jurisdiction by the court in Mississippi;

the failure of Routh to exhaust his administrative remedies pursuant to the Wyoming Worker's Compensation Act; and the absence of any provision in the Wyoming Governmental Claims Act abrogating sovereign immunity with respect to the tort claims included in the Mississippi award. The district court granted the Division's motion for summary judgment, and Routh has taken this appeal from the Order Granting Defendant's Motion for Summary Judgment.

Article IV, Section 1 of the Constitution of the United States[2] requires that the final judgments and public acts of one state be afforded full faith and credit in every other state. *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 270, 100 S.Ct. 2647, 2655, 65 L.Ed.2d 757 (U.S.Dist.Col. 1980); We have captured this proposition by ruling:

> The United States Supreme Court has held that full faith and credit 'generally requires every State to give a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it.' A foreign judgment will be enforced to its full extent regardless of any errors or irregularities it may contain.

Burlington Northern R. Co. v. Dunkelberger, 918 P.2d 987, 991, in which we quoted with approval from *Marworth, Inc. v. McGuire*, 810 P.2d 653, 655-56 (Colo. 1991). In *Sandstrom v. Sandstrom*, 880 P.2d 103, 106 (Wyo. 1994), we also followed

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[2] Article IV, §1 of the Constitution of the United States provides:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Acts, Records, and Proceedings shall be proved, and the Effect therof.

the *Marworth* opinion. Our statute defines a foreign judgment for purposes of registration as:

> In this act, 'foreign judgment' means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

Wyo. Stat. §1-17-702 (1988). A clear exception to the requirements of the full faith and credit clause of Constitution of the United States is the proposition that the foreign judgment must be valid and the court entering that judgment must have had personal jurisdiction over the defendant. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S.Ct. 559, 564, 62 L.Ed.2d 490 (U.S.Okla. 1980); *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (U.S.Wash. 1945).

One theory espoused by the Division, in this court and in the district court, is that the court in Mississippi never obtained personal jurisdiction over the Division. We review issues relating to personal jurisdiction as a matter of law. *Global Shipping & Trading, Ltd. v. Verkhnesaldinky Metallurgic Co.*, 892 P.2d 143, 146 (Wyo. 1995); *Eddy v. Oukrop*, 784 P.2d 610 (Wyo. 1989). The parties in their briefs have focused upon the issue of sufficient minimum contacts by the Division in Mississippi to satisfy the due process clause of the Fourteenth Amendment to the Constitution of the United States. Due process must be satisfied even though technically valid service is obtained over the defendant.

Of course, if valid service was not accomplished, there is no need to reach the minimum contacts requirement

of the due process clause. We inquire initially then, whether the Division, as an agency of the State of Wyoming, falls within the provisions of the Mississippi statute relating to service upon nonresident defendants. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 470 n.12, 105 S.Ct. 2174, 2181, 85 L.Ed.2d 528 (U.S.Fla. 1985); *World-Wide Volkswagen Corp.*, 444 U.S. at 290, 100 S.Ct. at 563. The Mississippi statute, pursuant to which service was obtained and upon which jurisdiction over the Division depends, reads:

> **Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this state as to doing business herein,** who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi. Such act or acts shall be deemed equivalent to the appointment by such nonresident of the Secretary of State of the State of Mississippi, or his successor or successors in office, to be the true and lawful attorney or agent of such nonresident upon whom all lawful process may be served in any actions or proceedings accrued or accruing from such act or acts, or arising from or growing out of such contract or tort, or as an incident thereto, by any such nonresident or his, their or its agent, servant or employee.

* * *

MISS. CODE ANN. §13-3-57 (1980) (emphasis added).

In analyzing this statute, the Supreme Court of Mississippi has said:

> There are two components of the state standard. First, the state's long-arm statute, as interpreted by the state courts, must apply. Second, its application in the particular case must comport with the due process requirements of the fourteenth amendment [sic]. *Brown [v. Flowers Industries, Inc.]*, 688 F.2d [328] at 331-32 [(5th Cir. 1982)]; *Terry [v. Raymond International, Inc.]*, 658 F.2d [398] at 401 [(5th Cir. 1981)]. Thus, the state standard, in referring to the power of state courts, incorporates elements of both state and federal law.

Sorrells v. R & R Custom Coach Works, Inc., 636 So.2d 668, 671 (Miss. 1994), quoting, *DeMelo v. Toche Marine, Inc.*, 711 F.2d 1260, 1264-65 (5th Cir. (Miss.) 1983); *see also, McDaniel v. Ritter*, 556 So.2d 303, 307-08 (Miss. 1989). Mississippi holds that this long-arm statute requires that at least one of its self contained conditions must be satisfied in order for it to be utilized. *Sorrells*, 636 So.2d at 671. In interpreting a statute, the law in Mississippi is very similar to our rule, and requires that the court interpret and apply the statute according to its plain meaning without relying upon any of the rules to aid statutory construction so long as the statute is not ambiguous. *Chandler v. City of Jackson Civil Service Com'n*, 687 So.2d 142, 144 (Miss. 1997); *State Tax Com'n v.*

Earnest, 627 So.2d 313, 320 (Miss. 1993).

The class of defendants who may be served under the Mississippi statute is clear and unambiguous. None of the descriptions of potential defendants listed in the statute would include another sovereign state such as Wyoming. A state simply is not a "nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the constitution and laws of [Mississippi]" to do business in Mississippi. We are satisfied that the only permissible interpretation of the Mississippi statute permitting service upon nonresident defendants does not support a conclusion that the statute authorized service upon the State of Wyoming. Service under the statute failing, the court in Mississippi had no personal jurisdiction over the Division in this case. In the absence of technically valid service, we have no occasion to consider whether the claimed sufficient minimum contacts would otherwise subject Wyoming to jurisdiction in Mississippi pursuant to the due process clause of the Fourteenth Amendment to the Constitution of the United States.

In addition to a requirement of personal jurisdiction over a defendant, the absence of subject matter jurisdiction can render a judgment in a court of another state invalid. In *Matter of Contempt Order Issued Against Anderson*, 765 P.2d 933, 936 (Wyo. 1988) (citations omitted), we said:

> It is fundamental, if not axiomatic, that, before a court can render any decision or order having any effect in any case or matter, it must have subject matter jurisdiction. Jurisdiction is essential to the exercise of judicial power. Unless the court has

> jurisdiction, it lacks any authority to proceed, and any decision, judgment, or other order is, as a matter of law, utterly void and of no effect for any purpose. Subject matter jurisdiction, like jurisdiction over the person, is not a subject of judicial discretion. There is a difference, however, because the lack of jurisdiction over the person can be waived, but lack of subject matter jurisdiction cannot be. Subject matter jurisdiction either exists or it does not and, before proceeding to a disposition on the merits, a court should be satisfied that it does have the requisite jurisdiction.

This language was quoted in *United Mine Workers of America Local 1972 v. Decker Coal Co.*, 774 P.2d 1274, 1283 (Wyo. 1989), and followed in, *Boyd v. Nation*, 909 P.2d 323, 325 (Wyo. 1996); *see also, Pawlowski v. Pawlowski*, 925 P.2d 240, 243 (Wyo. 1996) (subject matter jurisdiction cannot be waived by the parties).

Just as we review the lack of personal jurisdiction as a matter of law, we also review the question of subject matter jurisdiction as a matter of law. The question to be determined is the subject matter jurisdiction of the court in Mississippi to resolve Routh's claim for benefits under the Wyoming Worker's Compensation Act. WYO. STAT. §27-12-101 to -804; *Pawlowski*, 925 P.2d at 242; *Gookin v. State Farm Fire and Cas. Ins. Co.*, 826 P.2d 229, 232 (Wyo. 1992). It is clear from the record, that following Routh's lead, the court in Mississippi determined that it should apply the law of Wyoming in its decision with respect to Routh's claim for permanent disability benefits under the Wyoming Worker's

Compensation Act. Not only does that approach comport with Mississippi law, but at the juncture of judgment, it became the "law of the case." The doctrine captured by the "law of the case" is that a trial court must adhere to its own prior rulings, adhere to the rulings of an appellate court, or perhaps follow the rulings of another court in the same case or a closely related case. *Triton Coal Co. v. Husman, Inc.*, 846 P.2d 664, 667-68 (Wyo. 1993), *followed by, Claim of Moriarity*, 899 P.2d 879, 887 (Wyo. 1995). *See also, Lyden By and Through Lyden v. Winer*, 913 P.2d 451, 454 (Wyo. 1996).

The Wyoming Worker's Compensation Act provides the procedure to be followed when a claimant disputes a disability impairment rating for purposes of obtaining permanent disability benefits. Under the statute "[i]f the percentage of physical impairment is disputed,the division shall obtain a second opinion and if the ratings conflict, shall determine the award upon consideration of the initial and second opinion." WYO. STAT. §27-14-405(e) (1987). If the claimant still is not satisfied with the award determined by the Division, the procedure for disputing the impairment rating and the award of permanent disability benefits is to pursue a contested case by seeking a referral to an independent hearing examiner for a formal hearing. WYO. STAT. §27-14-602(b) (1987). In any such contested case, "[t]he hearing examiner has exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable under [the worker's compensation] act." WYO. STAT. §27-14-602(c) (1987); *Tenorio v. State ex rel. Wyoming Workers' Compensation Div.*, 931 P.2d 234, 240 (Wyo. 1997).

So far as this record reveals, the only physician who provided a physical impairment rating was the physician at

the Gottsche Center who indicated that Routh's disability was 4% of the body as a whole. We do not know whether the Division was prepared to award permanent partial disability benefits at that level. We do know that the Division was advised by Routh's attorney to proceed no further. Instead of ever pursuing his remedies under the statute, Routh proceeded to file his complaint in the court in Mississippi. Obviously a direct action against the Division would not have been open to Routh in Wyoming. Under our law, the court lacks subject matter jurisdiction at the point in time at which an objection is filed and the case is referred to the independent hearing examiner. It follows that under the correct application of Wyoming law, which the Mississippi court acknowledged was applicable, it did not have subject matter jurisdiction over Routh's claim for benefits under the Wyoming Worker's Compensation Act.

The district court also ruled that Routh's failure to exhaust his administrative remedies under the Wyoming Worker's Compensation Act would prevent the Mississippi court from exercising jurisdiction. The election of a court to decline jurisdiction on the basis of non-exhaustion of administrative remedies is vested in the sound exercise of its discretion. *Glover v. State*, 860 P.2d 1169, 1171 (Wyo. 1993); *Union Pacific Resources Co. v. State*, 839 P.2d 356, 366 (Wyo. 1992). The doctrine of exhaustion has been articulated by this Court in this way:

> The exhaustion doctrine applies where an agency alone has been granted or found to possess exclusive jurisdiction over the case. The purpose of the doctrine then is to avoid premature interruption of the administrative process where the agency has been created to

apply a statute in the first instance.

People v. Fremont Energy Corp., 651 P.2d 802, 811 (Wyo. 1982), *followed by, Rissler &McMurry Co. v. State*, 917 P.2d 1157, 1160 (Wyo, 1996). In Wyoming, judicial action is withheld until the administrative process has run its course. *Wagoner v. State, Dept. of Admin. and Information*, 924 P.2d 88, 91 (Wyo. 1996).

We have held above that Routh was required to present his claim for permanent partial disability benefits to the Division, and if no accord was reached, to seek a hearing. He was entitled to a second opinion with respect to his impairment rating pursuant to WYO. STAT. §27-14-405(e). Assuming from his course of action that Routh would not be satisfied with a second physical impairment rating, the clear remedy was to seek a contested case hearing before an independent hearing officer. WYO. STAT. §27-14-602(b). Under the law of Wyoming, only after Routh had pursued the contested case hearing would he have exhausted his administrative remedies, and he then would be entitled to judicial review in the state district court. WYO. STAT. §27-14-602(b).[3]

We turn then to the tort aspects of Routh's judgment. The district court ruled that there is no provision in the Wyoming Governmental Claims Act, WYO. STAT. §1-39-101

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[3] In this instance, Routh was not seeking a supplemental award of worker's compensation benefits in a second and separate proceeding in Mississippi. Consequently, the application of the full faith and credit clasuse articulated in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 270, 100 S.Ct. 2647, 2655, 65 L.Ed.2d 757 (U.S. Dist.Col. 1980), is not pertinent here. The issue is not whether Routh could obtain worker's compensation benefits by a second action in Mississippi, but instead is whether he properly obtained worker's compensation benefits under Wyoming law.

to -120 (1988), which waives sovereign immunity with respect to these claims. There is no question that the Division is an agency of the State of Wyoming. In Wyoming, sovereign immunity pertains in any suit against the state in which a state officer or agency is or will be required to use state property or funds to afford the relief demanded. *State v. Stovall*, 648 P.2d 543, 548 (Wyo. 1982). The Wyoming statute is a closed end waiver of immunity from liability, and an injured party who seeks recovery from an agency of the State of Wyoming must establish that the conduct complained of fits into a specific statutory waiver of immunity. *Cooney v. Park County*, 792 P.2d 1287, 1299 (Wyo. 1990).

The Wyoming Governmental Claims Act waives sovereign or governmental immunity, but only for certain enumerated torts. *Harbel v. Wintermute*, 883 P.2d 359, 363 (Wyo. 1994); *Veile v. Board of County Com'rs of Washakie County*, 860 P.2d 1174, 1177 (Wyo. 1993); *Cooney v. Park County*, 792 P.2d at 1299. Under this statute, immunity is the rule and liability has to be established by an exception. *Vigil v. Ruettgers*, 887 P.2d 521, 524 (Wyo. 1994); *Hurst v. State*, 698 P.2d 1130, 1132 (Wyo. 1985). Standing as a statute that abrogates common law, our rule is that it is to be strictly construed. *Weston County Hosp. Joint Powers Bd. v. Westates Const. Co.*, 841 P.2d 841, 847 (Wyo. 1992); *Martinez v. City of Cheyenne*, 791 P.2d 949, 956 (Wyo. 1990).

The Mississippi court obviously was concerned with the question of immunity as the following colloquy between court and counsel demonstrates:

> THE COURT: Is there a Wyoming Law in regards to sovereign immunity?

> [COUNSEL]: There are provisions in the Wyoming constitution that I do not have, simply allowing the state to administer its workers compensation program. The only thing I can offer you there, Your Honor, is the statute I cited saying as a result of providing the workers compensation benefits that the employer is statutorily immune from suit.
>
> THE COURT: But you haven't answered my question. Is there Wyoming law regarding sovereign immunity?
>
> [COUNSEL]: **No, sir, there is not.** * * *

(Emphasis added). Obviously if this latter answer had been furnished by a Wyoming lawyer to a Wyoming court, either the lawyer would be guilty of lying or of total incompetence.

This is the premise for the assertion by the Division of constructive fraud on the part of Routh's Mississippi counsel that justifies a collateral attack upon the Mississippi judgment. Fraud may justify equitable relief from a judgment or decree where the prevailing party has prevented the unsuccessful party from having a fair submission of the controversy. *Pike v. Markman*, 633 P.2d 944, 948 (n. 1) (Wyo. 1981). *See also, Taylor v. Estate of Taylor*, 719 P.2d 234, 239 (Wyo. 1986). The RESTATEMENT (SECOND) OF JUDGMENTS advises that a judgment may be avoided if the judgment was based on a claim that the party obtaining the judgment knew to be fraudulent. RESTATEMENT (SECOND) OF JUDGMENTS §70(1)(b) (1980). One other commentator has suggested that fraud

suffices to preclude the registration of a foreign judgment under the Uniform Enforcement of Foreign Judgments Act. Sara L. Johnson, *Validity, Construction, and Application of Uniform Enforcement of Foreign Judgments Act*, 31 A.L.R.4th 706, 755 (1984).

The Wyoming Governmental Claims Act articulates the law of Wyoming on the issue of sovereign immunity, and even a cursory examination of the Wyoming statutes and cases would serve to demonstrate that the legislature has chosen not to abrogate sovereign immunity for claims such as this. The statute provides:

> (a) A governmental entity and its public employees while acting within the scope of duties are granted immunity from liability for any tort except as provided by W.S. §1-39-105 through §1-39-112. Any immunity in actions based on a contract entered into by a governmental entity is waived except to the extent provided by the contract if the contract was within the powers granted to the entity and was properly executed. The claims procedures of W.S. §1-39-113 apply to contractual claims against governmental entities.

Wyo. Stat. §1-39-104(a) (1988). The Mississippi court erroneously concluded that Routh's complaint for the torts of bad faith and infliction of emotional distress was not barred under Wyoming's law of sovereign immunity. There is nothing in any section of the statute, Wyo. Stat. §1-39-105 through -112, which would serve to abrogate sovereign immunity for these claims. Under Wyoming law, the claim

for bad faith and infliction of emotional distress against the state would fail.

There is yet another premise for not honoring the judgment with respect to the tort claims. Pursuant to Wyo. Stat. §1-39-113 (1988), Routh was required to file a claim. That statute provides:

> (a) No action shall be brought under this act against a governmental entity unless the claim upon which the action is based is presented to the entity as an itemized statement in writing within two (2) years of the date of the alleged act, error or omission, except that a cause of action may be instituted not more than two (2) years after discovery of the alleged act, error or omission, if the claimant can establish that the alleged act, error or omission was:
>
> > (i) Not reasonably discoverable within a two (2) year period; or
> >
> > (ii) The claimant failed to discover the alleged act, error or omission within the two (2) year period despite the exercise of due diligence.

The failure to file a claim within the two year period serves as a bar to an action brought on that claim. *Vigil*, 887 P.2d at 525; *Ruppenthal v. State, By and Through Economic Development and Stabilization Bd.*, 849 P.2d 1316, 1320 (Wyo. 1993); *Dye by*

Dye v. Fremont County School Dist. No. 24, 820 P.2d 982, 984 (Wyo. 1991). Routh did not even allege the filing of a claim in his Mississippi complaint, and under Wyoming law that would serve to justify dismissal of the complaint for the tort claims. In *Board of Trustees of University of Wyoming v. Bell*, 662 P.2d 410, 414 (Wyo. 1983), we articulated the rule that "in the absence of an allegation of the filing of such a claim the district court [does] not have jurisdiction over the subject matter of the action * * *." In *Amrein v. Wyoming Livestock Bd.*, 851 P.2d 769, 771 (Wyo. 1993), we expanded the rule in *Bell*, and held that, "in order to invoke the jurisdiction of the district court, such an allegation must encompass a statement of the date the claim was filed * * *."

We hold that the Order Granting Defendant's Motion Summary Judgment should be affirmed. This Mississippi judgment was not entitled to recognition in Wyoming because it was obtained without personal jurisdiction over the Division and without subject matter jurisdiction over the claim for worker's compensation benefits. Further, the State of Wyoming enjoys sovereign immunity, which we believe the Mississippi court would have recognized if it had not been mislead by counsel. The failure to follow the claims procedure in the Wyoming Governmental Claims statute also served to deprive the Mississippi court of jurisdiction over the tort claims. The judgment in favor of the Division stands.

APPENDIX B

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1997

CLAUDE V. ROUTH,	)	
	)	
Appellant	)	
(Plaintiff),	)	
	)	
v.	)	No. 96-291
	)	
STATE OF WYOMING, ex rel.,	)	
WYOMING WORKERS'	)	
COMPENSATION DIVISION,	)	
	)	
Appellee	)	
(Defendant).	)	

ORDER DENYING PETITION FOR REHEARING

This case came on before the Court upon the Petition for Rehearing of Claude V. Routh and Brief in Support of Petition for Rehearing filed herein on February 4, 1998, and the Court, having reviewed the filed, the record, the opinion of the Court, the Petition for Rehearing of Rehearing and the Brief in Support of Petition for Rehearing, and having carefully considered the matters presented therein, finds that the Petition for Rehearing should be denied, and it therefore is

ORDERED that the Petition for Rehearing of Claude V. Routh be, and the same hereby is, denied.

February 17, 1998.

BY THE COURT:

WILLIAM A. TAYLOR
Chief Justice

No. 97-1855

FILED
JUN 17 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1997

CLAUDE V. ROUTH,

Petitioner,

v.

STATE OF WYOMING, *ex rel.*, WYOMING WORKERS' COMPENSATION DIVISION,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Wyoming

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Wyoming Supreme Court stated five separate state law grounds for refusing to enforce the Mississippi judgment against Wyoming's state workers' compensation fund.

1. Was any one of the state law grounds sufficient?

2. If not, was the Mississippi judgment entitled to full faith and credit in Wyoming?

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STATEMENT OF THE CASE

The State of Wyoming operates an exclusive workers' compensation program through its Department of Employment, Workers' Compensation Division ("the Division"). The program is established by the Wyoming Worker's Compensation Act, Wyo. Stat. § 27-14-101, *et seq.* (1997), pursuant to specific authorization in the Wyoming Constitution, Art. 10, § 4.

Project Construction Corporation ("PCC") was a Delaware Corporation registered to do business in the State of Wyoming. As required by the Wyoming Workers' Compensation Act, PCC obtained worker's compensation coverage for its employees through the Division.

In 1985, PCC hired Petitioner Claude V. Routh ("Routh"). The hiring was done in Wyoming, for work to be performed in Wyoming. On November 18, 1985, while living in Wyoming and working in Wyoming, Routh was injured in the course of his employment when he fell off a ladder. He filed a worker's compensation claim with the Division, and the claim was allowed.

Under the Wyoming Worker's Compensation Act, injured workers are free to choose their own health-care providers. The Division paid Routh's Wyoming health care providers and paid his claims for temporary total disability benefits. Routh moved from Wyoming to Mississippi and changed health care providers. Both Routh and his Mississippi health care providers continued to submit their benefit claims to the Division. The Division continued to pay pursuant to its statute, procedures and fee schedules, as it does for all injured workers who move from the state.

According to medical reports from Routh's health care providers, it appeared that he had reached maximum medical improvement by early 1988. The Division informed Routh and his Mississippi attorney that a permanent disability award would require a disability rating using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. When Routh's Mississippi health care providers refused to provide such a rating, the Division arranged for an examination in Wyoming. The Division paid for Routh's transportation to Wyoming in July, 1988. The examining physician questioned Routh's credibility, but he found a 4% permanent impairment. The Division forwarded a copy of the physician's report to Routh's Mississippi attorney on August 8, 1988.

On September 2, 1988, Routh's attorney notified the Division by letter that Routh's condition was still being evaluated in Mississippi and instructed the Division to do nothing further with respect to any claim for, or settlement of, Routh's permanent disability benefits. Routh never filed a formal application for disability benefits. He also did not exercise his right to a hearing, even though he had a right to a paid attorney for a hearing and any appeals. The Division stopped processing the permanent disability benefits.

On February 21, 1990, Routh instead filed a complaint against the Division in Mississippi state court, seeking workers' compensation permanent total disability benefits, damages for emotional distress, and punitive damages. Default was entered against the Division on April 3, 1990. On August 19, 1992, the Mississippi court

entered a default judgment against the Division, awarding $923,400.50 in actual damages and $1,000,000 in punitive damages.

Routh states that "[w]hen he sought [permanent disability] benefits, the WWCD ignored him and took no action on his claim." Pet. at 2. This is a substantial misrepresentation.

REASONS TO DENY THE WRIT

I. The decision of the Supreme Court of Wyoming is clearly supported by numerous and adequate non-federal grounds.

This Court refrains from exercising certiorari jurisdiction when the decision of the state court rests upon adequate non-federal grounds. *See Arizona v. Evans*, 115 S.Ct. 1185, 1189-90 (1995). In this case, the Wyoming Supreme Court expressly based its decision upon at least five state law grounds.

A. The Mississippi action was barred by the "exclusive jurisdiction" provision of the Wyoming Worker's Compensation Act.

The Wyoming Worker's Compensation Act is an exclusive state fund with an administrative claims determination process. In the case of permanent disability, a claimant has an absolute right to a second impairment rating, Wyo. Stat. § 27-14-405(e) (1987), to a hearing before an independent hearing examiner and to an appointed attorney, Wyo. Stat. § 27-14-601(c), (d) (1987).

The hearing examiner has "exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable [to the claimant]." Wyo. Stat. § 27-14-602(c) (1987). The district courts of the state have no authority to afford affirmative relief but are limited to review of administrative determinations for compensation as provided in the Wyoming Administrative Procedure Act. *State ex rel. Wyo. Workers' Comp. Div. v. Hollister*, 794 P.2d 886 (Wyo. 1990).

The Mississippi court acknowledged that it must apply Wyoming workers' compensation law to Routh's complaint. Since a Wyoming court would have no jurisdiction to entertain a direct action against the Division by a plaintiff who abandoned his administrative claim, the Mississippi court did not have subject matter jurisdiction over Routh's claims arising from the Wyoming Workers' Compensation Act.[1]

Mississippi courts consistently refuse to become involved in other states' administrative workers' compensation programs. *L.&A. Constr. Co. v. McChasen*, 198 So.2d 240 (Miss. 1967); *Bethlehem Steel v. Payne*, 183 So.2d 912 (Miss. 1966). Nor will they assume subject matter jurisdiction against an out-of-state compensation carrier when the law of the state in which the claim arose does

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[1] While this Court may address jurisdictional issues pursuant to its certiorari jurisdiction, the petition does not raise any jurisdictional issues aside from the full faith and credit claim. Pet. at i. Therefore no jurisdictional issues are properly before the Court. *See Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 114 S.Ct. 425, 427 n.5 (1993) (per curiam) (citing Rule 14.1(a)). Likewise, the Petition does not present any choice of law question.

not permit such an action. *Overstreet v. Liberty Mutual Ins. Co.*, 263 So.2d 528 (Miss. 1972). *See also Dial v. Hartford Acc. & Indem. Co.*, 863 F.2d 15 (5th Cir. 1989) (affirming dismissal of tort claim against compensation carrier because administrative claim still pending).

The Wyoming Supreme Court held that the exclusive jurisdiction provision of the Workers' Compensation Act would preclude a tort action in Wyoming or Mississippi, stating "**under the correct application of Wyoming law**, [ ] the Mississippi court . . . did not have subject matter jurisdiction over Routh's claim for benefits[.]" Pet. at App. 14 (emphasis added).

B. The Mississippi long-arm statute did not authorize service on the State of Wyoming.

A plaintiff seeking to hale an out-of-state defendant into state court must meet a threshold test. The defendant must be both served with process and amenable to suit under the forum state's long-arm statute. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Invalid service voids all further proceedings against the defendant. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

Routh attempted to serve the Division pursuant to the Mississippi long-arm statute:

> Any nonresident **person, firm, general or limited partnership, or any foreign or other corporation** not qualified under the constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in

> part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi. Such act or acts shall be deemed equivalent to the appointment by such nonresident of the secretary of state of the State of Mississippi, or his successor or successors in office, to be the true and lawful attorney or agent of such nonresident upon whom all lawful process may be served in any actions or proceedings accrued or accruing from such act or acts, or arising from or growing out of such contract or tort, or as an incident thereto, by any such nonresident or his, their, or its agent, servant or employee.

Miss. Code Ann. § 13-3-57 (1980) (emphasis added). *See Sorrell v. R & R Custom Coach Works, Inc.*, 636 So.2d 668, 671 (Miss. 1994) (applying Mississippi long-arm statute). The long-arm statute is to be interpreted according to its plain language. *Chandler v. City of Jackson Civil Serv. Comm'n*, 687 So.2d 142, 144 (Miss. 1997); *State Tax Comm'n v. Earnest*, 627 So.2d 313, 320 (Miss. 1993). The Division is an agency of the State of Wyoming, established by statute, Wyo. Stat. § 9-2-2002, not a "person, firm, general or limited partnership, or any foreign or other corporation[.]" Since the State of Mississippi does not purport to assert jurisdiction through its long-arm statute over another sovereign state, the court in Mississippi did not obtain personal jurisdiction over the Division.

The Wyoming Supreme Court carefully analyzed the Mississippi long-arm statute and held "the Mississippi statute permitting service upon nonresident defendants

does not . . . authorize[ ] service upon the State of Wyoming." Pet. at App. 11.

C. Under the law of Wyoming Routh failed to exhaust his administrative remedies.

The Wyoming Supreme Court, applying Wyoming statutes and judicial authority, held that Routh failed to exhaust his available worker's compensation remedies before resort to any judicial proceeding. "In Wyoming, judicial action is withheld until the administrative process has run its course." Pet. at App. 15 (citation omitted).

D. Under the Wyoming Governmental Claims Act, the state and its agencies were immune from Routh's tort claims.

The Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, *et seq.* (1997), is a limited waiver statute. A plaintiff seeking recovery in tort from an agency of the State of Wyoming must allege conduct that comes within one of the enumerated categories where the state has consented to be sued. *Cooney v. Park County*, 792 P.2d 1287 (Wyo. 1990). The State of Mississippi has retained an even greater measure of immunity. Miss. Ann. Stat. § 11-46-3 (1980).

Nothing in Wyoming's Governmental Claims Act could be construed as a waiver of sovereign immunity for Routh's claims, nor does Routh allege such a waiver. Routh's counsel misled the Mississippi court in this regard; he told the court that there is no Wyoming law regarding sovereign immunity. There is no source of

authority under either Wyoming or Mississippi law for Routh's claims against a state. Although the Wyoming Supreme Court did not address Mississippi law on sovereign immunity, it unequivocally held "the [Wyoming] legislature has chosen not to abrogate sovereign immunity for claims such as this." Pet. at App. 18.

E. Routh did not comply with either the notice requirement or limitations period of the Wyoming Governmental Claims Act.

The Wyoming Supreme Court expressly held that Routh did not file a governmental claim within the two-year limitations period of the Governmental Claims Act. The Court also held that Routh's Mississippi complaint failed to allege the filing of a governmental claim. An allegation of the specific date on which the claim was filed is, under Wyoming law, a jurisdictional prerequisite to any action based on that claim. Pet. at App. 19-20.

II. The decision of the Wyoming Supreme Court does not involve an important federal question and does not conflict with the decisions of this Court.

Routh relies on *Nevada v. Hall*, 440 U.S. 410 (1979), for the broad proposition that a state may not assert its own sovereign immunity when sued in the courts of a sister state. In *Hall*, this Court did not universally abrogate state sovereign immunity. The Court held simply that California law would determine the question of amenability to suit for accidents on California highways, even when the defendants were employees of Nevada

traveling on official business. The judgment against Nevada was in accord with California's Motor Vehicle Code, providing for service of process against non-resident motorists. Routh's Mississippi judgment, by contrast, violated both Wyoming's Governmental Claims Act and Mississippi's long-arm statute. *See, infra,* part IB, D, E.

Wyoming merely sent Workers' Compensation payments to Routh and his health care providers following Routh's unilateral decision to move there. The plaintiff's unilateral activity can never establish the defendant's contact with the forum. *Helicopteros Nacionales de Columbia v. Hall,* 466 U.S. 408 (1984).

In *Crider v. Zurich Ins. Co.,* 380 U.S. 39 (1965), the injured worker filed his action in the state where he resided and received his injury. Likewise, in *Pacific Ins. Co. v. Industrial Acc. Comm'n,* 306 U.S. 493 (1939), a Massachusetts employee was permitted to bring a claim in California for a work injury suffered there.

None of the cases cited by Routh supports the proposition that a worker injured in a state with a state-operated compensation program may abandon his claim there, move to another state, and sue the first state for damages. Routh would manipulate the Full Faith and Credit Clause in a manner that this Court proscribes:

> [W]e think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events. . . . Few matters could

> be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power.

Pacific Ins., 306 U.S. at 502-03.

III. The Court should deny the writ for prudential reasons.

Routh's Petition for Writ of Certiorari seeks a simple redetermination of the facts found by the Wyoming trial court and the Wyoming Supreme Court. He argues that his misrepresentation to a Mississippi judge regarding Wyoming's law on sovereign immunity and the exclusiveness of its workers' compensation remedies should prevail over the pronouncements of the Wyoming Supreme Court on those subjects. Finally, the Petitioner effectively asserts that this Court has already abrogated the states' sovereign immunity. This Court has not done so. Nothing in this case, where a judgment was obtained without conformity to the law of either Wyoming or Mississippi, requires the Court to consider such a dramatic change in the federal relationship among the states.

CONCLUSION

The Court should deny the writ.

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